

California Regional Water Quality Control Board
Santa Ana Region

March 12, 2004

ITEM: 19

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – David Kerr, Kerr Construction, on behalf of Mr. Lindekugel, 26180 Northshore Drive, Moreno Valley, Riverside County

DISCUSSION:

On January 21, 2004, David Kerr, Kerr Construction, contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. Kerr is the contractor hired by the current homeowner (Mr. Lindekugel), who resides in a house located at the site. An existing subsurface disposal system is utilized for the discharge of sanitary wastes from the house. The property is just under one-half acre in size (20,261 sq. ft. or 0.46 acre net). This area is unsewered and on-site septic tank-subsurface disposal systems are utilized for disposal of sanitary wastes.

As the contractor for Mr. Lindekugel, Mr. Kerr has converted an attached garage into a master bedroom suite with full bathroom (including toilet, sink and bathtub) on the front of this property. He has installed a new 750-gallon septic tank-subsurface disposal system to serve the bedroom/bath addition and has constructed a separate detached garage.

On October 13, 1989, the Regional Board adopted a Basin Plan amendment that requires new developments for which on-site subsurface disposal use is proposed to have a minimum of one-half acre of land per dwelling unit. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwaters of the Region. The property is just under one-half acre; however, use of the existing subsurface disposal system is exempt from the minimum lot size requirements as the lot was created prior to the 1989 requirements. However, the proposed addition of a second subsurface disposal system does not conform to these requirements. Accordingly, Board staff denied Mr. Kerr's request, on Mr. Lindekugel's behalf, for approval for the use of the second septic tank. The parties seek Regional Board consideration of this matter.

In adopting the minimum lot size requirements (MLSRs), the Board recognized that there would likely be proposals for additions to existing developments that would result in increased wastewater flow. The Board's MLSRs address these circumstances. Additions to existing dwellings (bedrooms/bathrooms) are exempt from the MLSRs, provided that the existing septic system can accommodate the additional wastewater flows. The MLSRs also specify that replacement of an existing septic tank system to accommodate additional flows resulting from additions to existing dwellings is exempt from the minimum lot size requirement. However, the

addition of a second septic tank to accommodate such additional flows is not exempt from the MLSRs. The Regional Board did not exempt the addition of a second system based on concerns that the second system could result, over the long-term, in the addition of substantial wastewater flows beyond those resulting from additions to existing dwellings. For example, in future, the second system might be used to accommodate flows from a freestanding structure, such as Mr. Lindekugel's new detached garage. While the new detached garage does not now contain plumbing fixture units that would result in additional wastewater flows, a subsequent owner of the property may seek to convert this garage into a granny flat or other type of use that would result in additional wastewater flows. (It should be noted that the second septic tank has been placed under what will be the driveway to the new detached garage. Connection of plumbing fixtures in the detached garage to the second septic tank would require that the driveway be torn up and subsequently replaced.)

Mr. Kerr advised Board staff (see January 21, 2004 letter, attached), that Mr. Lindekugel proceeded with the development of his property in good faith, based on satisfaction of pertinent requirements, including permit fees, as these gentlemen were advised of them. Board staff investigation of the circumstances leading to implementation of the modifications at the site, including the installation of the second septic tank, showed the following. First, the architect responsible for developing the plans for the modifications took it upon himself to confer with Riverside County Health Department staff to identify permit requirements, etc. for connection of the new bedroom/bathroom to the existing septic tank system. County staff identified a concern about the capacity of the existing system to accept the wastewater flows from the modified garage and recommended the installation of a new, small septic tank in lieu of connection to or replacement of the existing system. Clearly, County staff did not take into account the Regional Board's minimum lot size requirements in making this recommendation. In accordance with the County Health Department recommendation, the architect prepared plans showing the second septic tank and submitted the plans to the City of Moreno Valley. The City approved the plans, evidently without taking notice of the proposed second septic tank since the City did not implement the normal procedure of requiring County approval of the second septic tank prior to issuing a building permit. It was only when Mr. Kerr requested final inspection of the installed septic tank that the City advised Mr. Kerr that County Health Department approval was required. In seeking that approval, Mr. Kerr was notified of the need to obtain Regional Board approval for the installation of the second septic tank. As stated above, the project that has essentially been completed does not comply with the Board's MLSRs, and staff denied approval.

As indicated in Mr. Kerr's January 21, 2004 letter, Mr. Lindekugel, his architect and contractor appear to have acted to implement the modifications on the property in good faith and in conformance with relevant requirements as they were advised of them. Regrettably, these requirements were not disclosed in a timely and appropriate manner. (This is a matter that staff will address again via communication with both the County Health Department and the City of Moreno Valley.) Board staff has discussed with Mr. Kerr the offset option, whereby Mr. Lindekugel could satisfy the MLSRs by connecting another septic system to the sewer. There is no apparent interest in that option. Mr. Kerr points out in his letter that Mr. Lindekugel would have pursued alternative modifications had he been made aware in advance of the requirements that would govern the development of his property.

Mr. Kerr also points out that the additional flows that will occur as a result of the garage conversion will be no greater than those that would be allowed had the existing septic tank been replaced to accommodate them. Staff does not contest this point.

RECOMMENDATION:

Approve Mr. Kerr's request for an exemption from the minimum lot size requirements for the use of a second septic system to serve the proposed addition.

Comments were solicited from the following agencies

State Water Resources Control Board, Office of Chief Counsel – Jorge Leon
Riverside County Environmental Health – Sam Martinez
Riverside County Building and Safety – Tom Ingram
Riverside County Planning – Mark Balys
City of Moreno Valley, Building and Safety
City of Moreno Valley, Planning

FTM

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January 21, 2004

California Regional Water Quality
Control Board
3737 Main St. Suite 500
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Re: 26180 No. Shore
Moreno Valley

Follow up letter to meeting with Jun Martinez Jr. on January 21, 2004

To whom it may concern,

As part of a permitted garage conversion here in Moreno Valley, we installed a 700 gallon tank with a 25 x 5 leech pit. The soils tests and all set back requirements were met along with certifying the existing system. Now we have requested an inspection on the new tank and pit and are being told we need a letter from county health, who in turn says we need a letter from you allowing this small additional system. I am requesting you allow Mr. Lindekugel to keep the system we now have installed for the following reasons.

The most obvious is the system is already in and ready for inspection, it has been done correctly meeting all soils tests and location requirements.

The homeowner in good faith that he had satisfied all requirements has paid \$ 7,000 + - for soils tests, paid for the tank, pit and installation, city permit fees, plans and certification of existing system.

The most frustrating part of this is that the homeowner would not have just spent \$ 60,000 for a new detached garage, had he not been able to convert the existing garage into a new master bedroom suite. What is equally frustrating is the idea for a small separate system came from county health when they said that adding a new bedroom bath would put him over the fixture count for his existing system.

I feel the bottom line is we have tried to satisfy all requirements that have been put before us, we have done everything in good faith that the right steps were taken and now we have the septic contractor pointing fingers at the City, the City at the County, County back at the City, and we have a hole in the drive way so nothing can go in or come out of the garage, and a filled tank and open pit which poses possible safety and liability issues.

I appreciate your time in reviewing this matter; please call if I can clarify any issues. My cell phone number is 909-437-9611

Sincerely,


David Kerr